

COPY

*in Opinion*

May 3, 1956

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SEP 22 1998

CONCORD, N.H.

Hon. James J. Barry, Commissioner  
Department of Public Welfare  
State House Annex  
Concord, New Hampshire

Dear Sir:

This is in reply to your letter of March 30, 1956, in which you inquire if, under the circumstances set forth, three police officers of the Town of Plymouth are deemed to be covered by the Policemen's Retirement System although none is a member of that System, two having never even applied for membership. The question arises because, as you advise, you find it necessary to determine their eligibility for Old Age and Survivors Insurance.

We answer in the affirmative.

We understand a position to be covered by a retirement system within the meaning of 42 USC s. 418, see subsec. (d)(5)(A), with respect to service in a policeman's or fireman's position if it confers upon an incumbent who has the prescribed personal qualifications eligibility to belong to a retirement system. The mere fact that a present holder of such position may not possess the required personal qualifications and is thus for that reason personally not acceptable to the retirement system does not remove the position itself from the covered category.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

WEW/aml

cc: Judge Matson